

The Petitioner challenges the adequacy of the public participation process and the related public notice, the apparent limitations on the use of credible evidence and enforcement authority, the adequacy of the reporting and monitoring requirements, and the completeness of the permit and the corresponding narrative. In addition, the Petitioner alleges that the permit should cover two additional facilities and that it should include a compliance schedule requiring the Permittee to comply with PSD requirements and should require further emissions reductions to protect a Class I area. The Petitioner requests that EPA object to the Shaw Industries permit pursuant to CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2). For the reasons set forth below, I deny the Petitioner's request.

I. STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), calls upon each state to develop and submit to EPA an operating permit program intended to meet the requirements of CAA title V. The State of Georgia originally submitted its title V program governing the issuance of operating permits on November 12, 1993. EPA granted interim approval to the program on November 22, 1995. See 60 Fed. Reg. 57836 (November 22, 1995). Full approval was granted by EPA on June 8, 2000. See 65 Fed. Reg. 36358 (June 8, 2000). The program is now incorporated into Georgia's Air Quality Rule 391-3-1-.03(10). All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the Act, including the applicable implementation plan. See CAA sections 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (referred to as "applicable requirements") on sources. The program does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. See 57 Fed. Reg. 32250, 32251 (July 21, 1992). One purpose of the title V program is to "enable the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements." Id. Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units in a single document, therefore enhancing compliance with the requirements of the Act.

Permitting authorities must provide at least 30 days for public comment on draft title V permits and give notice of any public hearing at least 30 days in advance of the hearing. 40 CFR § 70.7(h). Following consideration of any comments received during this time, section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 CFR § 70.8(a) require that states submit each proposed permit to EPA for review. Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the permit if it is determined not to be in compliance with applicable requirements or the requirements of title V. 40 CFR § 70.8(c). If EPA does not object to a permit on its own initiative, CAA section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 CFR § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. These sections also provide that petitions shall be based only on objections to the permit raised with reasonable specificity during the public comment period (unless the petitioner demonstrates that it was impracticable to raise such objections within that period or the grounds for such objections arose after that period).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), requires the Administrator to issue a permit objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act, including the requirements of 40 CFR Part 70 and the applicable implementation plan. If, in responding to a petition, EPA objects to a permit that has already

been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause. A petition for review does not stay the effectiveness of the permit or its requirements if the permit was issued after the expiration of EPA's 45-day review period. See 42 U.S.C. §§ 7661d(b)(2)-(b)(3); 40 CFR § 70.8(d).

II. PROCEDURAL BACKGROUND

A. Permitting Chronology

EPD received a title V permit application submitted by Shaw Industries for its Plant No. 80 on October 17, 1996. The Department determined that the application was administratively complete on December 10, 1996. On July 13, 2001, EPD published the public notice providing for a 30-day public comment period on the draft title V permit for Shaw Industries. The public comment period for the draft permit ended on August 13, 2001. The Petitioner submitted comments to EPD in a letter, dated August 13, 2001, which serves as the basis for this petition. EPD subsequently issued the final permit to Shaw Industries for its Plant No. 80 on December 27, 2001.

B. Timeliness of Petition

EPA's 45-day review period for the Shaw Industries permit ended on September 27, 2001. The sixtieth day following that date, which was the deadline for filing any petitions for an objection to this permit, was November 26, 2001. As noted previously, on November 26, 2001, EPA received a petition from GCLPI on behalf of the Petitioner requesting that EPA object to the permit. Therefore, EPA considers this petition to be timely.

III. FACILITY BACKGROUND

Shaw Industries Plant No. 80 manufactures carpet. The manufacturing process includes tufting, continuous dyeing and SBR latex coating. Three boilers provide steam for the continuous dyeing operations. The finished product is broadloom tufted carpet.

The primary air emissions from this facility are total particulate matter, particulate matter greater than or equal to ten micrometers in diameter, sulfur dioxide ("SO₂"), volatile organic compounds ("VOC"), nitrogen oxides ("NO_x"), and carbon monoxide ("CO"). The facility is subject to the following State Implementation Plan ("SIP") requirements: Georgia Rules 391-3-1-.02(2)(b), *Visible Emissions*; (e), *Particulate Emission from Manufacturing Processes*; and (g), *Sulfur Dioxide*. See Title V Application Review, Shaw Industries, Permit No. 2273-313-0003-V-01-0. Under a consent order entered into with the State (discussed below), the facility also is subject to fuel sulfur content limits for No. 6 fuel oil burned in its boilers; those limits are included in the Plant No. 80 permit. Although VOC and CO are emitted, the facility is not

subject to any VOC- or CO-specific requirements.

Plant No. 80 and two other Shaw Industries facilities, Plant No. 2 and Plant No. 4, together constitute one part 70 source, because they are under common control, are located on contiguous and/or adjacent property, and have the same 2-digit Standard Industrial Classification (“SIC”) code. See Narrative for Shaw Industries, Inc., Plant No. 80, Permit No. 2273-313-0003-V-01-0, § I(B) (draft permit dated June 11, 2001). Each of these three facilities has been issued its own part 70 permit.

IV. ISSUES RAISED BY THE PETITIONER

A. Improper Permitting

Petitioner’s comment: 42 U.S.C. § 7661b(a) requires “major sources” to have a title V permit. The draft permit for this facility acknowledges that “Plants #2, 4, and 80 are all one Part 70 source[.]” However, EPD states that it intends to issue three separate permits at the request of the permittee for “administrative purposes.” EPD does not have the authority to issue three separate permits for one title V facility. Therefore, EPA should object to the permit and require EPD to issue one title V permit that covers all three facilities.

EPA’s response: Title V permit applications for three Shaw Industries facilities – Plant Nos. 2, 4 and 80 – were submitted to EPD as a package based on EPD’s determination that the three facilities constitute one part 70 source. They are under common control, are located on contiguous and/or adjacent property and have the same 2-digit SIC code. Potential emissions of SO₂, NO_x, PM, and VOC from the entire site exceed the 100 tons per year (“tpy”) major source threshold for air pollutants. See 42 U.S.C. §§ 7661, 7602(j); 40 CFR § 70.2. According to EPD’s permit narrative, “[f]or administrative purposes, Shaw requested separate Title V permits be issued for each facility.” See Narrative for Shaw Industries, Inc., Plant No. 80, Permit No. 2273-313-0003-V-01-0, § I(B) (draft permit dated June 11, 2001). The narrative does not indicate what such purposes were. Consistent with the company’s request, EPD issued three separate permits for the three facilities.

Although multiple facilities meeting the definition of “same source” must be evaluated as one source with respect to applicability, nothing in the CAA or part 70 prohibits permitting authorities from issuing multiple title V permits to one part 70 source. Section 502(a) makes it unlawful to operate a title V source “except in compliance with a permit” issued under title V but does not address the number of title V permits that may be issued for a source. Similarly, section 502(b)(5)(A) requires that permitting authorities have authority to “issue permits and assure compliance by all sources required to have a [title V] permit” without specifying the number of title V permits that may be issued for a source. See 40 CFR § 70.4(b)(3)(i) (similar regulatory language). Section 502(c) of the Act states that “a single permit may be issued for a facility with multiple sources” (emphasis added). Section 503(a), concerning permit applications, simply provides that “[a]ny [title V] source” is required to “have a permit” by certain dates. As for part

70, 40 CFR § 70.1(b) requires that “[a]ll sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.”

40 CFR § 70.3(a) requires only that the permitting authority “must provide for permitting of . . . [a]ny major source” and certain other sources (emphasis added). Thus, under the CAA and EPA’s regulations, a part 70 source is free to request that it be issued more than one part 70 permit, and permitting authorities are not prohibited from issuing multiple permits to facilities that together constitute a single source. However, permitting authorities that issue multiple permits should do so in a way that makes each facility’s compliance obligations clear. Each permit narrative or statement of basis should refer to the other permits and explain the relationships between the facilities for purposes of applicability determinations. For instance, each permit narrative should indicate whether any changes at one facility may require offsetting measures at another facility.

Based on the Plant No. 80 permit and the underlying narrative, EPD properly evaluated the applicability of applicable requirements to the part 70 source (comprised of Plant Nos. 2, 4 and 80) before issuing the part 70 permit. The narrative identifies and describes the other Shaw Industries facilities that are part of the same source as Plant No. 80 and explains their general location with respect to one another. While Petitioner asserts that the fact that three permits were issued makes it more difficult to detect the source’s non-compliance with PSD requirements, the Plant No. 80 permit’s narrative discusses the source’s past non-compliance and describes past PSD permitting actions for the three facilities that comprise the source as part of the “Site History” section. See Narrative for Shaw Industries, Inc., Plant No. 80, Permit No. 2273-313-0003-V-01-0, § I(E) (draft permit dated June 11, 2001). The description is sufficient to alert stakeholders who review the Plant No. 80 permit and narrative to other facilities that are part of the same part 70 source. EPA believes that the narrative would be more helpful if it described the “administrative purposes” that led to the issuance of three permits, instead of a single permit, and if it included more detail about the two other Shaw Industries facilities and the potential impacts of changes at those facilities on Plant No. 80’s compliance obligations. However, EPA believes that the absence of such information from the narrative does not compromise the Plant No. 80 permit and did not compromise the public’s ability to review or comment on the draft permit. Petitioner has not demonstrated that the Plant No. 80 permit is not in compliance with the CAA and part 70. The petition is therefore denied with respect to this issue.

B. Incomplete Permit

Petitioner’s comment: The Shaw Industries Plant No. 80 permit must contain a compliance schedule requiring the facility to comply with PSD requirements. According to Petitioner: “This is true even if we will assume that emissions unit [boiler] BL11 was a natural minor facility for PSD requirements when it was installed in 1978 at what is called Plant [No.] 2. When the two 59 MMBtu boilers and the one 25 MMBtu boiler were added in November of 1979 at what is called Plant [No.] 4, that made this whole facility a major facility because using the AP-42 emission factor, the two 59 MMBtu boilers alone had a potential to emit (“PTE”) of SO₂ of over 500 [tpy]. Even if this facility accepted a cap of 250 [tpy] to make it a synthetic minor, when the coal fired boilers were added in 1984, they would have had to be capped at the

synthetic minor limit for a major modification of 40 [tpy] rather than the synthetic minor cap for a new facility of 250 tpy. In other words, while it is arguable that PSD allows a “one time [doubling]” exception to NSR PSD for natural minors, it is clear that it does not allow a “two time doubling.” That is exactly what these draft Title V permits claim to do. Because it is unlikely that the three coal burners will be able to comply with a synthetic minor cap of 40 tpy, the Facility’s permit must contain a compliance schedule requiring the Facility to go through NSR PSD review.”

EPA’s response: EPD’s narrative for the Plant No. 80 part 70 permit describes the PSD permitting history of Plant No. 80 and Shaw Industries’ Plants Nos. 2 and 4, which are located on contiguous and/or adjacent property. In particular, EPD’s narrative describes the facilities’ past non-compliance with PSD requirements. For instance, the narrative explains that in 1984, when Plant No. 4 (which already had a permit to operate two coal-fired boilers and one natural gas or fuel oil-fired boiler) received a permit to construct and operate three coal-fired boilers, that permit should have limited SO₂ emissions from the boilers to less than 250 tpy of SO₂ in order to prevent the boilers’ installation from being a major source for PSD purposes. Later, in 1988, EPD issued Shaw Industries a permit to operate Plant No. 80 (formerly known as the Westcott Plant) which covered three boilers burning natural gas or No. 6 fuel oil. In 1988, EPD also issued a permit for the construction and operation of two boilers at Plant No. 2 (BL09 and BL10). At the time of their installation, the narrative explains, Plants No. 2, No. 4 and No. 80 “should have been considered one source and a major source as defined by the PSD regulations because they were located on contiguous property, were under common ownership and belonged to the same industrial grouping as identified by the same two-digit SIC code. [EPD] has determined that the permit for [the two boilers installed at Plant No. 2] should have limited the emissions increase from the two boilers to less than the significant emissions levels of 40 [tpy] of SO₂ and NO_x to prevent the installation of the boilers from being a major modification as defined by the PSD regulations.” See Narrative for Shaw Industries, Inc., Plant No. 80, Permit No. 2273-313-0003-V-01-0, § I(E)(1) (draft permit dated June 11, 2001).

On June 11, 2001, Shaw Industries and EPD entered into a consent order to rectify the historic PSD noncompliance at Plant No. 80 and other Shaw Industries facilities. See Georgia EPD Consent Order No. EPD-AQC-1877 (June 11, 2001), attached as Exhibit 1. Under the consent order, Shaw Industries agreed to burn only No. 6 fuel oil containing no more than 1.8 percent sulfur by weight at Plant No. 80 to limit SO₂ emissions. This requirement is included as Condition 3.2.1 in the Plant No. 80 title V permit, which prohibits the Permittee from burning any No. 6 fuel oil with a sulfur content greater than 1.8 percent, by weight, in boilers BL01, BL02 and BL03. See also Condition 3.2.2 (prohibiting the burning of any fuel other than natural gas or No. 6 fuel oil in boilers BL01, BL02 and BL03).

Part 70 requires that permit applications disclose non-compliance and establish compliance schedules for requirements for which a source is not in compliance at the time of permit issuance. 40 CFR §§ 70.5(c)(8)(ii)(C), 70.5(c)(8)(iii)(C). However, a compliance schedule was not required here because Plant No. 80’s past non-compliance was resolved before its title V permit was issued. The fuel oil sulfur content limit required under the consent order

was incorporated into Plant No. 80's title V permit when it was issued, thereby allowing Shaw Industries to properly avoid PSD review and other PSD requirements. Accordingly, the PSD requirements were not applicable requirements with respect to boilers BL01, BL02 or BL03 when Plant No. 80's title V permit was issued.¹ Therefore, no compliance schedule for the PSD requirements was required and there is no basis for objecting to the permit because it does not include one.

Petitioner also suggests that a compliance schedule is required because "it is unlikely that the three coal burners will be able to comply with a synthetic minor cap of 40 tpy." The boilers at Plant No. 80 are not subject to a synthetic minor cap. Yet, sources that are in compliance with applicable requirements at the time of permit issuance are not required to include compliance schedules to address the possibility of future non-compliance. See 40 CFR § 70.5(c)(3)(iii). Under the Plant No. 80 permit, a "responsible official" will be required to certify, in the facility's semi-annual monitoring reports, as to the facility's compliance with all applicable requirements to both EPA and the permitting authority. 40 CFR §§ 70.6(a)(3)(iii)(A), 70.5(d). In the event that Plant No. 80 or another part 70 source fails to comply with such a requirement, the source will be subject to enforcement by the permitting authority, EPA and citizens for violations of the CAA and/or the Georgia Air Quality Act. See Conditions 8.2.1, 8.3.1; 40 CFR § 70.6(a)(6)(i). The petition is therefore denied with respect to this issue.

C. Inadequate Public Notice and Participation

Petitioner's comment: EPD did not undertake the required public participation activities for this permit and therefore may not issue the final permit. First, 40 CFR § 70.7(h)(2) states that the public notice will explain where the public can review all relevant supporting documents. EPD's public notice states that "all information used to develop the draft permit are available for review." Since the public notice only addressed the availability of those relevant documents which were used, rather than those which could have been used by EPD to develop the draft permit, the public notice is inaccurate. Furthermore, the public is entitled to review information maintained at the facility under its SIP permits, such as records of analyses of fuel oil burned, which EPD may not review.

Second, the public notice states that "[a]fter the comment period has expired, the EPD will consider all comments, make any necessary changes and issue the Title V operating permit." This statement is inaccurate. Specifically, the statement suggests that, while changes may be made, in the end, the permit will be issued. However, under certain circumstances, EPD is required to refuse to issue a title V permit. 40 CFR § 70.7(a). As such, the aforementioned statement could be interpreted as an indication of EPD's predisposition to issue title V permits regardless of whether the permits comply with the law.

¹The PSD requirements could be triggered in the future if Shaw Industries seeks to make a change such as a major modification under the PSD regulations.

Third, the public notice itself is inadequate because it contains incomplete and inaccurate information. It only states that Plant No. 80 “has all the typical carpet manufacturing operations present including tufting and continuous dyeing” and that its “finished product ... is broadloom tufted carpet,” whereas § 70.7(h)(2) requires that the notice identify all activities involved in the permit action. Moreover, “it is unlikely that the public will know that the carpet manufacturer will have on-site boilers that burn[] fuel oil or coal.” Finally, the notice also states that comments must be submitted to EPD in writing²; this is inaccurate because the public can submit oral comments at a public hearing.

Therefore, because § 70.7(a)(1)(ii) prohibits the issuance of a title V permit unless all of the requirements for public participation pursuant to § 70.7(h) are satisfied, EPA should object to the permit and require EPD to re-notice the draft permit for a new public comment period.

EPA’s response: 40 CFR § 70.7(h)(2) requires that the public notice of a draft title V permit provide contact information for an individual from whom the public may obtain additional information, “including ... all relevant supporting materials” and “all other materials available to the permitting authority that are relevant to the permit decision.” The public notice for the Plant No. 80 permit explicitly designated a central location where the public could review relevant documents as follows:

The draft permit and all information used to develop the draft permit are available for review. This includes the application and all other relevant materials available to the permitting authority. This information is available for review at the office of the Air Protection Branch, 4244 International Parkway, Atlanta Tradeport - Suite 120, Atlanta, Georgia 30354.³

Furthermore, in accordance with § 70.7(h)(2), the public notice identified Jimmy Johnston, Stationary Source Permitting Program Manager at EPD, as the person to contact for more information.

This permit language meets the requirements of § 70.7(h)(2), which does not distinguish between materials that a permitting authority did use and those that a permitting authority could have used. It simply requires that the public notice address the availability of all “relevant” materials. EPD’s public notice for the Plant No. 80 draft permit satisfied this requirement of § 70.7(h)(2). Therefore, there is no basis for objecting to the permit on this issue.

²Specifically, EPD’s notice stated: “You are hereby notified of the opportunity to submit written public comments concerning the draft Title V Air Quality Operating Permit. Persons wishing to comment on the draft Title V Operating Permit are required to submit their comments, in writing, to EPD....” In addition, EPD’s notice stated that any requests for a public hearing must be made within the 30-day public comment period.

³The petition (p. 13) does not quote this language correctly.

The Petitioner further asserts that the public is entitled to review additional information that EPD may not have reviewed in drafting the facility's title V permit, such as information that is maintained at Plant No. 80 (e.g., records of analyses of fuel oil burned that are required under a SIP permit). The Petitioner states that the public needs access to such information in order to comment on the draft title V permit. If part 70 or applicable requirements such as SIP provisions require that such information be submitted to permitting authorities or EPA, EPA expects that it would be available for public review. EPA assumes that the public has access to all of the information contained in EPD's files, except for trade secrets or other information that EPD has determined is protected from disclosure under Georgia law. Also, permitting authorities are encouraged to respond to reasonable requests that they look beyond a permit application and supporting documents and/or requests for additional information during the comment period on a draft permit. For instance, if a citizen presents a permitting authority with credible information indicating that certain applicable requirements are missing from a permit application or that specific violations have occurred at a facility, the citizen may have a reasonable expectation that additional information will be made available for title V review. Otherwise, information that is required to be maintained only at a permitted facility generally need not be made available to the public at the start of the comment period on the facility's draft title V permit. In this case, the Petitioner has not alleged that EPD failed to make the materials listed in the public notice for the draft Plant No. 80 permit available for review. Nor has the Petitioner alleged that it requested, or that EPD failed to make available, any other particular information. Therefore, there is no basis for objecting to the Plant No. 80 permit on this ground.

Second, EPA does not agree with the Petitioner that the statement contained in the public notice summarizing the post-comment period proceedings is an indication of EPD's predisposition to issue title V permits regardless of their legality. Rather, EPA interprets the phrase "make any necessary changes" to include those changes that are needed to ensure that the title V permit meets the requirements of the CAA and part 70 prior to issuance by EPD. Therefore, EPA considers the statement to be an accurate one because the title V permit may then be issued in accordance with § 70.7(a)(1). See In re: Monroe Power Company – Monroe Power Plant, Pet. No. IV-2001-8 (Oct. 9, 2002) at 8.

Third, EPD adequately addressed the requirement to identify the "activity or activities involved in the permit action" in accordance with § 70.7(h)(2) by identifying the facility's primary operation in the public notice of the draft permit. Interested parties may obtain more detailed information by reviewing the relevant documents as directed by the public notice. In particular, the following paragraphs of EPD's narrative for the permit provide more detail about the activities at Shaw Industries Plant No. 80: Section I (Facility Description), Paragraphs B (Site Determination), D(3) (Overall Facility Process Description) and E(1) (Regulatory Status – PSD/NSR Site History); and Section III (Regulated Equipment Requirements), Paragraph A (Brief Process Description). Section III(A) specifically refers to Plant No. 80's boilers. The narrative is available on EPD's web site at: http://www.air.dnr.state.ga.us/sspp/titlev/issuedn_z.html.

Finally, with respect to public comment, part 70 does not specify the form in which comments must be submitted during the public comment period. Part 70 requires that all permit proceedings “provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit.” 40 CFR § 70.7(h)(2); see 42 U.S.C. § 7661a(b)(6) (requiring that part 70 programs contain “reasonable procedures” for public notice, “including offering an opportunity for public comment and a hearing”). Part 70 additionally requires that the public notice include “a brief description of the comment procedures required by [part 70]” and “the time and place of any hearing that may be held, including a statement of procedures to request a hearing” unless a hearing has been scheduled. 40 CFR § 70.7(h)(2). Therefore, EPD’s requirement that comments submitted in response to the public notice of the draft Plant No. 80 permit must be in writing is not prohibited by part 70 or the CAA. The Petitioner is correct that oral testimony may be submitted during a public hearing. However, EPD’s requirement does not prohibit the submission of oral testimony during a public hearing. Where a hearing on a draft part 70 permit is held, EPA expects that EPD will include oral testimony in the record of the permit action and respond to such comments. EPA also encourages EPD and other permitting authorities to consider all public comments received in response to public notices of their draft part 70 permits, regardless of the form of submission of such comments.

No public hearing was held on the draft Plant No. 80 permit, and nothing in the record indicates that a hearing was requested. In comments on the draft permit, however, the Petitioner suggested that EPD revise its public notice by adding language that would clarify that “written or spoken comments” may be submitted at a public hearing. EPD did not respond to this comment in writing. While the language suggested by the Petitioner is not required under part 70, EPA encourages EPD to consider incorporating it into EPD’s standard public notice of draft part 70 permits. EPA believes that the language, which would entail only minor changes to EPD’s current notice, would clarify the requirements for commenting on draft permits.

For the reasons discussed above, the Petitioner has not demonstrated that the Shaw Industries permit does not comply with the CAA and part 70 because of the public notice, and the petition is denied with respect to the issue of inadequate public notice and participation.

D. Limitation of Credible Evidence

Petitioner’s comment: The Shaw Industries permit contains language that appears to limit the use of credible evidence in enforcement actions, specifically Conditions 4.1.3, 6.1.3 and 8.17.1. EPD must remove language that is intended or appears to limit the use of credible evidence. EPA should further require EPD to affirmatively state in the permit that any credible evidence may be used in an enforcement action.

EPA’s response: EPA believes that the Plant No. 80 permit as amended (see the discussion below) appropriately provides for the use of reference test methods as the benchmark for determining compliance with applicable requirements and for the use of other credible evidence in enforcement actions and in compliance certifications. See In re: Citgo Petroleum

Corporation – Doraville Terminal, Pet. No. IV-2001-4 (June 5, 2002) (the “Citgo Order”) at 4 (explaining the appropriate roles of reference test methods and other credible evidence). In particular, EPA believes that the Plant No. 80 permit as amended adequately provides for the use of other credible evidence to show whether the source would have been in compliance if the reference test had been performed at some particular time. Condition 4.1.3 of the Plant No. 80 permit identifies the required reference methods to be used to satisfy any testing requirements; it is not intended, in any way, to limit the use of credible evidence. In fact, Condition 4.1.3 provides for the use of all credible evidence and information. Georgia Rule 391-3-1-.02(3)(a), which serves as the underlying authority for Condition 4.1.3, references EPD’s *Procedures for Testing and Monitoring Sources of Air Pollutants*, which permits the use of all credible evidence. Section 1.3(g) of this document states that “nothing. . . shall preclude the use, including the exclusive use, of any credible evidence or information.” Both the rule and referenced procedures are approved parts of the Georgia SIP. In addition, Condition 8.14.1.d of the Plant No. 80 permit adequately provides for the inclusion of credible evidence in compliance certifications by reciting the language from EPA’s own regulation at 40 CFR § 70.6(c)(5)(iii)(B) that was promulgated expressly for that purpose.

Condition 6.1.3, which requires the submission of deviation reports, provides in relevant part that failures to meet applicable emission limitations or standards or to comply with or complete work practice standards or requirements “shall be determined through observation, data from any monitoring protocol, or by any other monitoring which is required by this permit.” Although the language in Condition 6.1.3 may appear to limit the use of credible evidence, EPA believes that this was not the intention of EPD and that such language does not ultimately limit the use of credible evidence because the Georgia SIP expressly prohibits such an exclusion. Condition 8.17.1 does not limit the use of credible evidence because it allows the use of “any information available to the Division” and the phrase “but is not limited to” renders the listed forms of acceptable information not exclusive.⁴

Nonetheless, for further clarification, EPD added a general condition to the Plant No. 80 permit via a minor modification which expressly states that nothing shall preclude the use of any credible evidence. See Shaw Industries, Inc., Plant No. 80, Minor Permit Modification No. 2273-313-0003-V-01-1. As noted in the Citgo Order, EPD added this condition to the permit

⁴Condition 8.17.1 provides: “At all times, including periods of startup, shutdown, and malfunction, the Permittee shall maintain and operate the source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on any information available to the Division, which may include, but is not limited to, monitoring results, observations of the opacity or other characteristics of emissions, review of operating and maintenance procedures or records, and inspection or surveillance of the source.”

template to ensure that such language will be included in future title V permits issued by EPD.⁵ The petition is therefore denied with respect to the issue of limiting credible evidence.

E. Limitation of Enforcement Authority

Petitioner's comment: The Shaw Industries permit impermissibly limits who may enforce against violations of the permit. The Act provides that any "person" may take civil action to stop a violation of a title V permit. 42 U.S.C. § 7604(a). The Act defines "person" to include "an individual, corporation, partnership, association, State, municipality, political subdivision of a state. . ." 42 U.S.C. § 7602(e). However, the Shaw Industries permit limits those who can take enforcement actions to "citizens of the United States." This is contrary to the statute; therefore, the phrase "of the United States" must be deleted from Condition 8.2.1.

EPA's response: EPA agrees with the Petitioner that the original language contained in Condition 8.2.1 of the draft permit limiting those persons who can enforce the terms and conditions of the Shaw Industries permit to "citizens of the United States" was contrary to the CAA and EPA's part 70 regulations. See In re: Caldwell Tanks Alliance, LLC, Pet. No. IV-2001-1 (Apr. 1, 2002) at 4-5 and Enclosure to Attached Letter from Winston A. Smith, Air, Pesticide & Toxic Management Division, EPA Region 4, to Robert Ukeiley, GCLPI (Jan. 28, 2002) at 6-8 (explaining the reasons for EPA's position and stating EPD's commitment to revise Condition 8.2.1 in its permit template). However, EPD did not include the phrase "of the United States" in Condition 8.2.1 in the final Plant No. 80 permit, which instead provides for enforcement of the permit "by the EPA and citizens." Therefore, the petition is denied with respect to this issue because the issue is moot.

F. Inadequate Reporting

Petitioner's comment: 40 CFR § 70.6(a)(3)(iii)(A) and 42 U.S.C. § 7661c(a) require that permits include a requirement for submittal of reports of any required monitoring at least every six months. The Shaw Industries permit does not contain such a requirement. Condition 5.3.1, which references Condition 6.1.4, requires reporting of deviations pursuant to 40 CFR § 70.6(a)(3)(iii)(B) but does not satisfy the separate semi-annual reporting requirement. EPA should object to this permit and modify the permit to include a provision that requires the "submittal of reports of any required monitoring at least every 6 months." 40 CFR § 70.6(a)(3)(iii)(A).

⁵EPD provided EPA with a written commitment to add a general condition to the title V permit template, which expressly states that nothing shall preclude the use of any credible evidence, and to include this condition in every final title V permit not already signed by the Director of EPD by the date of said letter. Existing title V permits will be revised upon renewal to include the new condition. See Letter from Ronald C. Methier, Chief, Air Protection Branch, EPD, to James I. Palmer, Jr., Regional Administrator, EPA Region 4 (March 22, 2002).

EPA's response: The part 70 rule cited by the Petitioner, § 70.6(a)(3)(iii)(A), states that each permit shall require "[s]ubmittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports." This rule implements section 504(a) of the CAA, which requires that each title V permit include "a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring." EPD included Condition 5.3.1 in the Plant No. 80 permit to satisfy this requirement. This condition, in conjunction with Condition 6.1.4, requires quarterly rather than semi-annual reporting of information related to deviations, malfunctions, operating time, monitor down time, and other information.

The Petitioner argues that since § 70.6(a)(3)(iii)(B) requires reporting of deviations, the position EPD has taken that Condition 5.3.1 satisfies § 70.6(a)(3)(iii)(A) would render that rule meaningless, as it would be redundant to § 70.6(a)(3)(iii)(B). EPA disagrees with this assessment because § 70.6(a)(3)(iii)(B) is a requirement for "prompt" reporting of deviations and is separate from the semi-annual monitoring reporting requirements. The Plant No. 80 permit addresses the "prompt" reporting requirement under Conditions 6.1.2 and 6.1.3.

The Plant No. 80 permit, like other title V permits issued by EPD, includes considerable detail in Condition 6.1.4 regarding what must be included in the monitoring reports. See In re: Seminole Road Landfill, Pet. No. IV-2001-3 (June 5, 2002) (the "Seminole Road Landfill Order") at 4-5 (describing the information required under Conditions 6.1.4 and 6.1.3). For the reasons set forth in the Seminole Road Landfill Order, EPA believes that while the monitoring reports required by EPD focus on information related to deviations and monitoring device operation, EPD reasonably interpreted § 70.6(a)(3)(iii)(A) when it specified what the reports must contain to keep EPD informed of a facility's compliance status and potential problems. Thus, the petition is denied with respect to the issue of inadequate reporting.

G. Inadequate Monitoring

Petitioner's comment: Condition 5.2.1 requires visual inspections for opacity for boilers BL01, BL02 and BL03. Visual inspection is a primitive and sporadic monitoring method that is not adequate to assure compliance. Condition 5.2.1 should be changed to require continuous opacity monitoring systems ("COMS") for BL01, BL02 and BL03. Similarly, this facility should be required to install a continuous emissions monitoring system ("CEMS") for monitoring NO_x and SO_x when EPD corrects the permit to limit emissions of these pollutants. Finally, the facility should be required to conduct at least one "stack" test for all of the particulate matter emission limitations with a requirement for subsequent bi-annual test if the facility exceeds 75% of its permit limit.

EPA's response: Condition 5.2.1 requires the Permittee, "for each day or portion of a day that Boilers BL01, BL02 or BL03 are fired with No. 6 fuel oil, conduct a check of visible emissions from the boiler" and "retain a record of the visible emissions check in a daily visible emissions (VE) log suitable for inspection or submittal to [EPD]." Condition 5.2.1 also describes the procedure by which such visible emissions inspections must be conducted.

Condition 5.3.1 requires the Permittee to maintain records of all data and information required by Condition 5.2.1.

Given the nature of the fuel burned by the units, EPA believes that the monitoring and recordkeeping required under Conditions 5.2.1 and 5.3.1 are sufficient to assure compliance with the permit's terms and conditions. Boilers BL01, BL02 and BL03 are restricted by Condition 3.2.2 to burn only natural gas and No. 6 fuel oil, which are considered to be relatively clean-burning fuels. Since natural gas is the primary fuel and fuel oil is the backup fuel, EPA believes that the likelihood of these units exceeding the respective opacity standards (20 percent for BL01 and 40 percent for BL02 and BL03) is considered minimal. Therefore, requiring daily visual observations during those times when the boilers are firing fuel oil is sufficient, and requiring the use of COMS is not necessary. There are no applicable emission rate limitations for NO_x or SO_x. Accordingly, it is not necessary to require the use of CEMs for those pollutants.

With respect to particulate matter emissions, requiring stack tests at the frequency specified by the Petitioner is unwarranted. Emission units BL01, BL02 and BL03 are limited to burning only natural gas and No. 6 fuel oil. As indicated previously, these are relatively clean-burning fuels. The likelihood of these units exceeding the applicable fuel-burning equipment standards (contained in Georgia Rule 391-3-1-.02(2)(d)1.(ii) for BL01 and in Georgia Rule 391-3-1-.02(2)(d)2.(ii) for BL02 and BL03) for particulate matter while natural gas is combusted is considered very minimal. Nonetheless, visual observations will be used as a surrogate for assuring compliance with the particulate matter emissions limits during those times when fuel oil is combusted. Pursuant to Condition 4.1.1, EPD may require the facility, at any time, to conduct a performance test to demonstrate compliance with a particular emission limit or standard. For instance, EPD may require a performance test if visual observations showed that opacity routinely exceeded the applicable standard. The petition is therefore denied with respect to this issue.

H. Inadequate Class I Area Protection

Petitioner's comment: This facility is located within 100 kilometers of the Cohutta Wilderness Area and has an impact on the air quality of that area. There is currently a violation of the SO₂ increment in Cohutta. The narrative does not indicate, and there is no other reason to believe, that the 255 tons of SO₂ reduced in a recent enforcement action against Shaw Industries will eliminate the increment violation in Cohutta. Therefore, EPD should have included further reductions in emissions in this permit. For example, Petitioner suggests that the permit should require boilers BL01, BL02 and BL03 to burn natural gas to reduce SO_x emissions and should prohibit the burning of coal.

EPA's response: The Petitioner's comment concerns Class I area protections under the PSD program. However, in the exercise of its enforcement discretion, EPD entered into a consent order with Shaw Industries to address historic non-compliance with the PSD requirements at Plant No. 80 and other facilities. The consent order allows Plant No. 80 to avoid the PSD requirements (including Class I area requirements) by agreeing to comply with the fuel

oil sulfur content limits described in section IV(B) of this order. Since the consent order does not require Plant No. 80 to go through PSD review, the review of impacts on Class I areas and other PSD requirements that would apply if Shaw Industries had been required to obtain a PSD permit are not applicable. Plant No. 80's title V permit incorporates the requirements set forth in the consent order as applicable requirements and therefore reflects the State's resolution of Shaw Industries' historic PSD noncompliance at Plant Nos. 2, 4 and 80.⁶ Notably, Condition 3.2.2 of the Plant No. 80 permit prohibits the burning of any fuel other than natural gas or No. 6 fuel oil in boilers BL01, BL02 and BL03. Thus, the Petitioner has not carried its burden of demonstrating that the permit is not in compliance with applicable requirements, and the petition is denied with respect to this issue.

In any event, the Petitioner has not presented any evidence that Shaw Industries has caused or significantly contributed to any modeled SO₂ increment violation in Cohutta. However, EPD would reassess the ambient impacts to ensure that no violation of the SO₂ increment would result if at some future time Plant No. 80 goes through PSD review for a future PSD modification, or if EPD reviews the adequacy of its PSD program in response to information that an applicable increment is being violated.

I. Practical Enforceability

Petitioner's comment: Condition 3.4.1 contains a particulate matter emission limit in the form of a formula. However, the permit does not provide the heat input values for emissions sources (boilers) BL01, BL02 and BL10.⁷ Therefore, this condition is not practically enforceable as one cannot determine the particulate matter emission limit with the information in the permit. The permit should contain an understandable numeric limit such as pounds per hour.

EPA's response: Nonetheless, EPD correctly incorporated the particulate matter emission limit of Georgia Rule 391-3-1-.02(2)(d)2.(ii) into the permit as a formula rather than a fixed numeric limit. EPD interprets the rule to be a maximum allowable emission rate that varies with heat input at any given time, not a maximum limit based on the maximum rated heat input of the fuel-burning equipment. Generally, compliance with such an emission standard is

⁶By contrast, EPA policy addressing historic non-compliance with PSD requirements provides that sources found in violation of major new source review requirements generally should be required to go through PSD review, rather than agree to comply with "synthetic minor" PTE limits on a going-forward basis (as Shaw Industries and EPD agreed with respect to Plant Nos. 2 and 4). See Memorandum from Eric V. Schaeffer, Director, Office of Regulatory Enforcement, U.S. EPA, to Various Officials, "Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements" (Nov. 17, 1998). EPA reserves the right to overfile state settlements to enforce PSD requirements.

⁷The petition references BL10 as an emission unit; however such a unit does not exist at Plant No. 80. EPA assumes that the intended reference is to boiler BL03.

demonstrated during performance tests where the heat input can readily be determined. Nonetheless, EPD's determination that no additional monitoring is required to assure compliance with Condition 3.4.1 (and likewise with Condition 3.4.3, which addresses boilers BL02 and BL03) is appropriate since boilers BL01, BL02 and BL03 may only burn natural gas and No. 6 fuel oil, and the sulfur content of the No. 6 fuel oil is limited to 1.8%, by weight. See Conditions 3.2.1 and 3.2.2. Calculations based on AP-42 data for residual fuel oil combustion (which is more critical with respect to particulate matter emissions than natural gas combustion) show that, at a given heat input, the maximum particulate matter emission rate will be significantly less than the maximum allowable rate given by the formula in Condition 3.4.1. This tendency for a relatively large margin of compliance (i.e., the difference between the maximum and allowable emission rates) justifies EPD's decision not to require additional monitoring. The petition is therefore denied with respect to the issue of the practical enforceability of Condition 3.4.1.

J. Incomplete Narrative

Petitioner's comment: Narratives must provide a complete factual and legal basis for the inclusion or exclusion of applicable requirements. 40 CFR § 70.7(a)(5). This draft permit states that the acid rain program of title IV of the Act is not applicable. However, the narrative does not provide any factual or legal basis for this conclusion. Therefore, the narrative needs to be changed to include an explanation or the permit needs to be changed to include title IV requirements.

EPA's response: 40 CFR § 70.7(a)(5) requires that the permitting authority provide a statement that "sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." EPA believes that a statement of basis, or narrative, should include a discussion of any complex applicability determinations and address any non-applicability determinations. Although the elements of a statement of basis may differ depending on the type and complexity of the facility, the statement of basis should provide sufficient information for the reader to understand the permitting authority's conclusion about the applicability or non-applicability of specific statutory or regulatory provisions. Here, EPA agrees with the Petitioner that EPD's narrative for the Plant No. 80 permit should have included one sentence explaining that the federal acid rain program requirements do not apply to Plant No. 80 because it is not a utility and it is not an "opt-in" source under the acid rain program. However, given that Plant No. 80 obviously is not a utility and that there is no evidence that the facility is an "opt-in" source, EPD's failure to discuss the non-applicability of the acid rain program requirements in the narrative at most constitutes harmless error. The petition is therefore denied with respect to this issue.

V. CONCLUSION

For the reasons discussed above and pursuant to section 505(b) of the CAA, 42 U.S.C. § 505(b), and 40 CFR § 70.8(d), I hereby deny the petition of GCLPI on behalf of the Sierra Club concerning the Shaw Industries Plant No. 80 title V operating permit.

So ordered.

Dated: November 15, 2002

Christine Todd Whitman
Administrator